



6560-50

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA-R04-OAR-2009-1010-201158; FRL-9493-5]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; North Carolina: Redesignation of the Hickory-Morganton-Lenoir 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correcting amendment.

SUMMARY: EPA is taking final action to approve a request submitted on December 18, 2009, and supplemented on December 22, 2010, from the State of North Carolina, through the North Carolina Department of Environment and Natural Resources (NC DENR), Division of Air Quality (DAQ), to redesignate the Hickory-Morganton-Lenoir fine particulate matter (PM_{2.5}) nonattainment area (hereafter the “Hickory Area” or “Area”) to attainment for the 1997 Annual PM_{2.5} National Ambient Air Quality Standards (NAAQS). The Hickory Area is comprised of Catawba County in its entirety. EPA’s approval of the redesignation request is based on the determination that the State of North Carolina has met the criteria for redesignation to attainment set forth in the Clean Air Act (CAA or Act), including the determination that the Hickory Area has attained the 1997 Annual PM_{2.5} NAAQS by its applicable attainment date of April 5, 2010. Additionally, EPA is approving a revision to the North Carolina State Implementation Plan (SIP) to include the 1997 Annual PM_{2.5} maintenance plan for the Hickory Area that contains the new motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO_x) for the years 2011 and

2021 for Catawba County and the mobile insignificance determination for direct PM_{2.5} for the Hickory Area. This action also approves the emissions inventory submitted with the maintenance plan. Further, EPA is correcting a typographical error for the citation associated with a previous adequacy determination the Agency made for the NO_x MVEBs for Catawba County and the mobile source insignificance determination for direct PM_{2.5} for the Hickory Area.

EFFECTIVE DATE: This rule will be effective [insert 30 days after date of publication in the Federal Register].

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2009-1010. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Madolyn Dominy or Joel Huey, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia 30303-8960. Madolyn Dominy may be reached by phone at (404) 562-9644 or via electronic mail at dominy.madolyn@epa.gov. Joel Huey may be reached by phone at (404) 562-9104 or via electronic mail at huey.joel@epa.gov.

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I. What is the Background for the Actions?

On December 18, 2009, and supplemented on December 22, 2010, the State of North Carolina, through NC DENR, submitted a request to redesignate the Hickory Area to attainment for the 1997 Annual PM_{2.5} NAAQS, and for EPA approval of the North Carolina SIP revisions containing a maintenance plan for the Area. In an action published on September 20, 2011 (76 FR 58210), EPA proposed approval of North Carolina's plan for maintaining the 1997 Annual PM_{2.5} NAAQS, including the emissions inventory submitted pursuant to CAA section 172(c)(3)

and the NO_x MVEBs for Catawba County and the mobile insignificance determination for direct PM_{2.5} for the Hickory Area as contained in the maintenance plan. At that time, EPA also proposed to approve the redesignation of the Hickory Area to attainment. Additional background for today's action is set forth in EPA's September 20, 2011, proposal.

The MVEBs, specified in kilograms per year (kg/yr), included in the maintenance plan are as follows:

**Table 1. Catwaba County MVEBs
(kg/yr)**

Conformity MVEB	2011	2021
NO_x	3,996,601	2,236,028

In its September 20, 2011, proposed action, EPA noted that the adequacy public comment period on these MVEBs (as contained in North Carolina's submittal) began on November 23, 2010, and closed on December 23, 2010. No comments were received during the public comment period. Thus, EPA deemed the new MVEBs for Catawba County and the mobile source insignificance determination for PM_{2.5} in the Hickory Area adequate for the purposes of transportation conformity on May 2, 2011 (76 FR 24475).

As stated in the September 20, 2011, proposal, this redesignation addresses the Hickory Area's status solely with respect to the 1997 Annual PM_{2.5} NAAQS, for which designations were finalized on January 5, 2005 (70 FR 944), and as supplemented on April 14, 2005 (70 FR 19844).

EPA reviewed PM_{2.5} monitoring data from ambient PM_{2.5} monitoring stations in the Hickory Area for the PM_{2.5} seasons from 2007-2009. These data have been quality-assured and are recorded in Air Quality System (AQS). The annual arithmetic mean PM_{2.5} concentrations for

2006-2009 and the 3-year averages of these values (i.e., design values) are summarized in Table 2. EPA has reviewed more recent data which indicate that the Hickory Area continues to attain the 1997 PM_{2.5} NAAQS. The design values for 2007-2009 and 2008-2010 are also included in Table 2 and demonstrate that the Hickory Area continues to meet the PM_{2.5} NAAQS and that the ambient concentrations of PM_{2.5} are continuing to decrease in the Area. Preliminary monitoring data for the 2011 PM_{2.5} season indicate that the Area is continuing to attain the 1997 Annual PM_{2.5} NAAQS based on data from 2009-2011. These preliminary data are available in the docket for today's action although they are not yet certified.

Table 2. Design Value Concentrations for the Hickory 1997 Annual PM_{2.5} Nonattainment Area (µg/m³)

County	Site Name	Monitor ID	Annual Average PM _{2.5} Concentrations (µg/m ³)				
			2006	2007	2008	2009	2010
Catawba	Hickory	37-035-0004	15.18	14.62	12.75	10.32	11.23
			Three-Year PM _{2.5} Design Values (µg/m ³)				
			2006-2008		2007-2009		2008-2010
Catawba	Hickory	37-035-0004	14.2		12.6		11.4

II. What are the Actions EPA is Taking?

In today's rulemaking, EPA is approving: (1) North Carolina's emissions inventory which was submitted pursuant to CAA section 172(c)(3); (2) North Carolina's 1997 Annual PM_{2.5} maintenance plan (such approval being one of the CAA criteria for redesignation to attainment status) for the Hickory Area, including NO_x MVEBs and mobile source

insignificance determination for direct PM_{2.5}; and (3) North Carolina's redesignation request to change the legal designation of the Hickory Area from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. The maintenance plan is designed to demonstrate that the Hickory Area will continue to attain the 1997 Annual PM_{2.5} NAAQS through 2021. EPA's approval of the redesignation request is based on EPA's determination that the Hickory Area meets the criteria for redesignation set forth in CAA, sections 107(d)(3)(E) and 175A, including EPA's determination that the Hickory Area has attained the 1997 Annual PM_{2.5} NAAQS. EPA's analyses of North Carolina's redesignation request, emissions inventory, and maintenance plan are described in detail in the September 20, 2011, proposed rule (76 FR 58210).

Consistent with the CAA, the maintenance plan that EPA is approving also includes 2011 and 2021 NO_x MVEBs for Catawba County and the mobile source insignificance determination for direct PM_{2.5} in the Hickory Area. In this action, EPA is approving these NO_x MVEBs for Catawba County and the mobile source insignificance determination for direct PM_{2.5} in the Hickory Area for the purposes of transportation conformity. For required regional emissions analysis years beyond 2011 and prior to 2021, the applicable budgets will be the new 2011 NO_x MVEBs. For required regional emissions analysis years that involve 2021 or beyond, the applicable budgets will be the new 2021 NO_x MVEBs.

EPA is also correcting an inadvertent typographical error for the citation (in EPA's September 20, 2011, proposed rulemaking) associated with EPA's adequacy determination for the NO_x MVEBs for Catawba County and the mobile source insignificance determination for direct PM_{2.5} for the Hickory Area. In EPA's September 20, 2011 proposed rulemaking, EPA provides the citation for the adequacy determination for the NO_x MVEBs for Catawba County and the mobile source insignificance determination for direct PM_{2.5} for the Hickory Area as 76

FR 24472 in the second to last paragraph in the section entitled “X. Proposed Actions on the Redesignation Request and Maintenance Plan SIP Revision Including Approval of the NO_x MVEBs for 2011 and 2021 and the Direct PM_{2.5} Insignificance Determination for the Hickory Area.” The correct citation is 76 FR 24475. Through this action, EPA is making this correction.

III. Why is EPA Taking These Actions?

EPA has determined that the Hickory Area has attained the 1997 Annual PM_{2.5} NAAQS and has also determined that all other criteria for the redesignation of the Hickory Area from nonattainment to attainment of the 1997 Annual PM_{2.5} NAAQS have been met. *See* CAA section 107(d)(3)(E). One of those requirements is that the Hickory Area has an approved plan demonstrating maintenance of the 1997 Annual PM_{2.5} NAAQS. EPA is also taking final action to approve the maintenance plan for the Hickory Area as meeting the requirements of sections 175A and 107(d)(3)(E) of the CAA. In addition, EPA is approving the emissions inventory as meeting the requirements of section 172(c)(3) of the CAA. Finally, EPA is approving the new NO_x MVEBs for the years 2011 and 2021 for Catawba County and the mobile source insignificance determination for direct PM_{2.5} for the Hickory Area as contained in North Carolina’s maintenance plan because these MVEBs and the insignificance determination are consistent with maintenance of the 1997 Annual PM_{2.5} standard in the Hickory Area. The detailed rationale for EPA’s determinations and actions are set forth in the proposed rulemaking and in other discussion in this final rulemaking.

IV. What are the Effects of These Actions?

Approval of the redesignation request changes the legal designation of Catawba County in its entirety from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. EPA is modifying the regulatory table in 40 CFR 81.334 to reflect a designation of attainment for these full and partial counties. EPA is also approving, as a revision to the North Carolina SIP, North Carolina's plan for maintaining the 1997 Annual PM_{2.5} NAAQS in the Hickory Area through 2021. The maintenance plan includes contingency measures to remedy possible future violations of the 1997 Annual PM_{2.5} NAAQS and establishes NOx MVEBs for the years 2011 and 2021 for Catawba County and an insignificance determination for direct PM_{2.5} for the Hickory Area. Additionally, this action approves the emissions inventory for the Hickory Area pursuant to section 172(c)(3) of the CAA.

V. Final Action

EPA is taking final action to approve the redesignation and change the legal designation of Catawba County in its entirety from nonattainment to attainment for the 1997 Annual PM_{2.5} NAAQS. EPA is also approving into the North Carolina SIP the 1997 Annual PM_{2.5} maintenance plan for the Hickory Area, which includes the new NOx MVEBs of 3,996,601 kg/yr for 2011 and 2,236,028 kg/yr for 2021 for Catawba County. Further, EPA is approving the insignificance determination for direct PM_{2.5} for the Hickory Area.

Additionally, EPA is approving the 2008 emissions inventory for the Hickory Area pursuant to section 172(c)(3) of the CAA. In a previous action, EPA found the new Catawba County NOx MVEBs and the mobile source direct PM_{2.5} insignificance determination for the Hickory Area adequate for the purposes of transportation conformity (76 FR 24475, May 2,

2011). Within 24 months from the effective date of EPA's adequacy determination, the transportation partners will need to demonstrate conformity to the new NO_x MVEBs pursuant to 40 CFR 93.104(e) and will need to document the mobile source direct PM_{2.5} insignificance determination for the PM_{2.5} NAAQS in future conformity determinations (76 FR 24475).

VI. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of the maintenance plan under CAA section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those required by state law. A redesignation to attainment does not in and of itself impose any new requirements, but rather results in the application of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For these reasons, these actions:

- are not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- are certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- are not significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- are not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and,
- do not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this final rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA

will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: November 7, 2011

A. Stanley Meiburg,
Acting Regional Administrator,
Region 4.

40 CFR parts 52 and 81 are amended as follows:

PART 52-[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

Subpart II - North Carolina

2. Section 52.1770(e) is amended by adding two new entries “1997 Annual PM_{2.5}

Maintenance Plan for the Hickory, North Carolina Area (Catawba County)” and “1997 Annual PM_{2.5} Maintenance Plan for the Hickory, North Carolina Area – MOVES Update” at the end of the table to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(e) * * *

EPA-Approved North Carolina Non-Regulatory Provisions

Provision	State effective date	EPA approval date	<u>Federal Register</u> citation
**	**	**	*
1997 Annual PM _{2.5} Maintenance Plan for the Hickory, North Carolina Area (Catawba County)	12/18/09	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]
1997 Annual PM _{2.5} Maintenance Plan for the Hickory, North Carolina Area – MOVES Update	12/22/10	[Insert date of publication in <u>Federal Register</u>]	[Insert citation of publication]

PART 81-[AMENDED]

3. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

4. In § 81.334, the table entitled “North Carolina-PM_{2.5} (Annual NAAQS)” is amended under “Hickory-Morganton-Lenoir, NC” by revising the entry for “Catawba County” to read as follows:

§ 81.334 North Carolina.

* * * * *

North Carolina- PM _{2.5} (Annual NAAQS)		
Designated area	Designation ^a	
	Date ¹	Type
* * *	* * *	*
Hickory-Morganton-Lenoir, NC:		
Catawba County	This action is effective [<u>Insert date of publication in the Federal Register</u>]	Attainment
* * *	* * *	*

^a Includes Indian Country located in each county or area, except as otherwise specified.

¹ This date is 90 days after January 5, 2005, unless otherwise noted.

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[FR Doc. 2011-29769 Filed 11/17/2011 at 8:45 am; Publication Date: 11/18/2011]